

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
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Application by BellSouth Corporation, )  
BellSouth Telecommunications, Inc., )  
and BellSouth Long Distance, Inc. for ) Docket No. CC 97-208  
Provision of In-Region, InterLATA )  
Service in South Carolina )

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**REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.  
IN OPPOSITION TO THE REQUEST FOR  
IN-REGION, INTERLATA RELIEF**

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November 14, 1997

## SUMMARY

The record in this proceeding overwhelmingly and unequivocally demonstrates that BellSouth Telecommunications, Inc.'s application to provide in-region, interLATA service in South Carolina is premature and must, as a matter of law, be rejected. The record demonstrates that:

- BellSouth has received "qualifying requests" from competing carriers.
- BellSouth does not provide unbundled network elements, as required.

Intermedia's experience shows that BellSouth has not provided the frame relay-capable loops and related components that Intermedia requested well over a year ago.

- BellSouth does not provide resale services, as required. Intermedia's experience demonstrates that BellSouth is unable to deliver on switch "as-is" orders.
- BellSouth's operations support systems are inadequate and discriminatory. Intermedia's experience in South Carolina and the rest of BellSouth territory<sup>1</sup> demonstrates that BellSouth's interfaces are functionally and operationally deficient. Moreover, Intermedia's experience shows that BellSouth simply does not provide access to its

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BellSouth's operations support systems and related personnel are centralized across BellSouth's local exchange territory. Thus, Intermedia's experience in other states served by BellSouth is also reflective of the situation in South Carolina.

operations support systems that is equal to the level of access that it provides to itself in terms of quality, accuracy, and timeliness.

- BellSouth does not comply with its interconnection and reciprocal compensation obligations. BellSouth has made it clear that it will not pay mutual compensation for local traffic transported and terminated to Internet service providers.

Numerous parties in this proceeding echo Intermedia's negative experience with BellSouth. The Commission cannot ignore the many signed affidavits and declarations submitted by the parties which attest to BellSouth's failure to comply with the requirements of the 1996 Act. Moreover, BellSouth has not demonstrated compliance with its obligations through performance reports or similar evidence of parity. As a result, the Commission is compelled to reject BellSouth's application to provide in-region, interLATA service in South Carolina.

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

Application by BellSouth Corporation, )  
BellSouth Telecommunications, Inc., )  
and BellSouth Long Distance, Inc. for ) CC Docket No. 97-208  
Provision of In-Region, InterLATA )  
Service in South Carolina )

To the Commission:

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**REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.  
IN OPPOSITION TO THE REQUEST FOR  
IN-REGION, INTERLATA RELIEF**

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**INTERMEDIA COMMUNICATIONS INC.** ("Intermedia"), by its undersigned counsel and pursuant to the Commission's public notice, dated September 30, 1997,<sup>2</sup> hereby respectfully submits its reply comments in opposition to BellSouth Corporation, BellSouth Telecommunications, Inc. ("BellSouth"), and BellSouth Long Distance, Inc.'s request for in-region, interLATA authority under Section 271<sup>3</sup> of the federal Telecommunications Act of 1996 (the "1996 Act"). The record in this proceeding unequivocally demonstrates that BellSouth does not meet the threshold requirements of either

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<sup>2</sup> Public Notice, DA No. 97-2112 (Sept. 30, 1997).

<sup>3</sup> 47 U.S.C. § 271.

Section 271(c)(1)(A)<sup>4</sup> ("Track A") or Section 271(c)(1)(B)<sup>5</sup> ("Track B") and, moreover, fails to demonstrate, by preponderance of the evidence, that it meets each and every requirement of Section 271(c)(2)(B)<sup>6</sup> (hereinafter, the "Competitive Checklist").

## I. INTRODUCTION

The record in this proceeding is replete with stories from competing carriers in South Carolina. Regrettably, the stories are not stories of competitive success, but rather of frustrations with BellSouth. They are not stories of market-opening steps successfully completed, but rather examples of confused policies and delayed or flawed implementation. They are not stories of fair-play, but rather of discrimination.

The record in this proceeding singularly demonstrates that BellSouth is not yet ready to enter the in-region, interLATA market in South Carolina. Intermedia's first-hand experience, much like those of other competing carriers, shows an operations support system that is inadequate. Intermedia's experience also points to an incumbent that is simply not in compliance with its resale, unbundling, interconnection, and reciprocal compensation obligations. Finally, Intermedia's experience shows BellSouth's lack of commitment to abide by its agreements.

Congress has empowered this Commission to make the ultimate determination of BellSouth's readiness to enter the in-region, interLATA market. The 1996 Act defines, in very specific terms, what BellSouth must do to qualify. The record is clear that BellSouth

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<sup>4</sup> 47 U.S.C. § 271(c)(1)(A).

<sup>5</sup> 47 U.S.C. § 271(c)(1)(B).

<sup>6</sup> 47 U.S.C. § 271(c)(2)(B).

has not complied with the requirements. The Commission is thus compelled to find that, at this time, BellSouth's application to provide in-region, interLATA service in South Carolina is premature.

**II. THE RECORD DEMONSTRATES THAT BELL SOUTH IS PRECLUDED, AS A MATTER OF LAW, FROM PROCEEDING UNDER TRACK B.**

The record in this proceeding demonstrates that BellSouth is precluded, as a matter of law, from proceeding under Track B. As numerous commenters have argued in this proceeding, a Bell Operating Company ("BOC") may not file under Track B when the BOC has received requests for interconnection that, if implemented, would result in the provision of facilities-based telephone exchange service to residential and business subscribers.<sup>7</sup>

Several competitive local exchange carriers ("CLECs") have submitted "qualifying requests" to BellSouth. The record shows that DeltaCom is financially committed to providing "wireline residential and business local exchange services throughout the State of South Carolina."<sup>8</sup> Indeed, DeltaCom has publicly announced its intention to offer local exchange service throughout its service area, including South Carolina. In addition, DeltaCom has a local service tariff for both business and residential subscribers on file with the South Carolina PSC.<sup>9</sup>

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<sup>7</sup> See, e.g., Comments of ALTS, at 5; Comments of CompTel, at 5-6.

<sup>8</sup> Comments of ALTS, at 7.

<sup>9</sup> *Id.*



Similarly, ACSI states that it will have a switch providing local dial tone installed in South Carolina by the first quarter of 1998. This Lucent 5ESS switch will give ACSI the technical capability to provide facilities-based local telephone services to both business and residential customers in its South Carolina markets. Indeed, ACSI has indicated in this proceeding that, although its business strategy focuses primarily on business customers, ACSI also will provide facilities-based service to residential callers located in multiple dwelling units and served through shared tenant service providers where it makes economic sense.<sup>10</sup>

AT&T also has acknowledged that it will provide service to residential and business customers. As AT&T states, in March 1996, AT&T "confirmed and amplified AT&T's intention to serve residential and business customers throughout the region using unbundled network elements, resale, and interconnection."<sup>11</sup> Several other competing carriers who have approved interconnection agreements with BellSouth, including Intermedia, either have facilities in place or are in the process of building facilities that would enable them to provide service to both residential and business customers.

The record in this proceeding therefore demonstrates unequivocally that BellSouth has pending before it numerous interconnection requests that, if implemented, would establish facilities-based competitive local service to both business and residential customers in South Carolina. Because these requests were submitted to BellSouth within 10 months of the date the 1996 Act took effect, BellSouth is precluded from seeking in-region,

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<sup>10</sup> Comments of ACSI, at 14; Affidavit of James Falvey, at ¶ 10.

<sup>11</sup> Comments of AT&T, at 50; Carroll Affidavit, at ¶ 14, 16-17.

interLATA relief under Track B. This conclusion is compelled by the 1996 Act, and is fully consistent with the position taken by the Commission in rejecting SBC Communications Inc.'s application for in Section 271 relief in Oklahoma:

We conclude that Congress intended to preclude a BOC from proceeding under Track B when the BOC receives a request for access and interconnection from a prospective competing provider of telephone exchange service, subject to the exceptions in section 271(c)(1)(B). . . . Thus, we interpret the words "such provider" as used in section 271(c)(1)(B) to refer to a potential competing provider of the telephone exchange service described in section 271(c)(1)(A). We find it reasonable and consistent with the overall scheme of section 271 to interpret Congress' use of the words "such provider" in section 271(c)(1)(B) to include a potential competing provider. This interpretation is the more natural reading of the statute because, unlike SBC's strained interpretation, it retains the meaning of the term "request." By its terms, Track B only applies where "no such provider has requested the access and interconnection described in [section 271(c)(1)(A)]." . . . To give full effect to the term "request," we therefore interpret the words "such provider" to mean any such potential provider that has requested access and interconnection.<sup>12</sup>

Of course, when proceeding under Track A or Track B, BellSouth must comply fully with each and every item of the Competitive Checklist enumerated in Section 271(c)(2)(B) of the 1996 Act. As Intermedia discusses in the following sections, the record in this proceeding demonstrates that BellSouth has to date failed to meet these requirements.<sup>13</sup>

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<sup>12</sup> *Application of SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order (rel. June 26, 1997).

<sup>13</sup> The fact that local competition in South Carolina has not fully developed has no bearing on the ultimate question of whether there are qualifying requests in South Carolina. The comments of the South Carolina Consumer Advocate are  
(continued...)

**III. THE RECORD DEMONSTRATES THAT BELL SOUTH'S OPERATIONS SUPPORT SYSTEMS ("OSS") ARE DEFICIENT AND DISCRIMINATORY.**

The overwhelming evidence in the record<sup>14</sup> leads to one and only one conclusion: BellSouth's operations support systems are severely deficient and do not permit competing carriers to operate at parity with BellSouth. Indeed, as several competing carriers argue, deficiencies in BellSouth's operations support systems render access to unbundled network elements ("UNEs") inadequate.<sup>15</sup> The same deficiencies render access to resale services inadequate. As many commenters assert, BellSouth does not provide nondiscriminatory access to its OSS.<sup>16</sup> Where access is provided, the access requires

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<sup>13</sup>(...continued)

instructive on this issue:

The current lack of competition is not, in itself, evidence that BellSouth's competitors are not taking steps to implement facilities-based local competition. To the contrary, it is evidence that the progression of the process in South Carolina has gotten out of order, and needs to be put back on a more logical track, one which is also consistent with the process set forth in the Telecommunications Act.

Comments of the South Carolina Consumer Advocate, at 5.

<sup>14</sup> As explained previously, BellSouth's operations support systems and related personnel are centralized, i.e., they serve the entire BellSouth territory. Thus, the experiences of competing carriers in other states are also reflective of the situation in South Carolina.

<sup>15</sup> See, e.g., Comments of TRA, at 32; Comments of Hyperion and KMC, at 9; Comments of AT&T, at 23; Comments of ACSI, at 46.

<sup>16</sup> See, e.g., Comments of AT&T, at 23; Comments of Hyperion and KMC, at 5, 9; Comments of LCI International, at 1; Comments of MCI, at 10.

extensive manual intervention and is inferior in quality to the OSS functionalities BellSouth provides to itself.<sup>17</sup>

The deficiencies of BellSouth's wholesale support processes are borne out by the experiences of competing carriers. For example, LCI states that it has experienced numerous problems with BellSouth's Electronic Data Interface ("EDI") system. LCI cites to problems relating to training (or lack thereof), certification testing, firm order commitment ("FOC") delays, lost orders, and others.<sup>18</sup> LCI has experienced major problems with BellSouth's EDI interface. For instance, LCI's orders were rejected by BellSouth although LCI followed BellSouth's implementation guides. Moreover, there were orders submitted for which no order acknowledgments were received back from BellSouth, even though such acknowledgments are required by EDI standards.<sup>19</sup> MCI's experience shows that BellSouth's ordering processes have caused dialtone losses.<sup>20</sup>

Sprint offers its experience in Florida as proof that BellSouth's operations support systems, particularly with respect to the provisioning of unbundled loops, are inadequate. For example, Sprint has experienced problems in virtually all phases of the customer activation or "cut-over" process for unbundled loops. As Sprint states, BellSouth has regularly missed its commitment to notify Sprint within 48 hours of an order's receipt if there is a problem with the order. Similarly, BellSouth has been unable to cancel disconnect

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<sup>17</sup> See, e.g., Comments of ALTS, at 23-24; Comments of MCI, at 20.

<sup>18</sup> Comments of LCI International, at 2.

<sup>19</sup> Comments of LCI International, at 3.

<sup>20</sup> Comments of MCI, at 23.

orders for Sprint customers while BellSouth works on problems with its cut-over process.<sup>21</sup>

ACSI's experiences also amply reflect BellSouth's deficient wholesale support processes. ACSI claims that BellSouth has unreasonably delayed installation of requested services, failed to coordinate ACSI orders, substantially disrupted service to customers for extended periods during switches to ACSI, and subjected ACSI and its customers to a series of unpredictable and unexplained service disconnections well after initial service was established.<sup>22</sup> Even with respect to the most basic resale "as is" orders, competing carriers continually encounter problems with BellSouth. For example, DeltaCom has had difficulties with placing simple "as is" resale orders,<sup>23</sup> as does Intermedia.

The problems encountered by Sprint, LCI, ACSI, and other CLECs, are symptomatic of a much larger problem of BellSouth's failure to dedicate adequate resources to meet its legal obligations. As Intermedia and ACSI explained in their comments, the reports prepared by BellSouth's paid consultant demonstrate pervasive mismanagement, incompetence, and system failures within BellSouth's Local Carrier Service Center ("LCSC"), the center that processes all manual service orders submitted to competing carriers.<sup>24</sup> These reports confirm what Intermedia, ACSI, and other competing carriers have been experiencing first-hand. More fundamentally, despite BellSouth's attempts to trivialize these experiences, and notwithstanding its protestations that the problems with the

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<sup>21</sup> Petition to Deny of Sprint, at 16-18.

<sup>22</sup> Comments of ACSI, at 27-28.

<sup>23</sup> *See, e.g.*, Comments of ALTS, at 23.

<sup>24</sup> *See, e.g.*, Comments of ACSI, at 28; Comments of Intermedia, at 26-36.

LCSC have been rectified, competing carriers' recent experiences singularly demonstrate that BellSouth has not addressed these problems.

In this regard, Intermedia's experience with placing "switch as-is orders" via EDI is instructive. BellSouth has publicly stated that it will provide FOCs within 48 hours.<sup>25</sup> As Intermedia demonstrates below, however, not only has BellSouth consistently missed the 48-hour target, it has not even acknowledged receipt of Intermedia's orders in some cases.<sup>26</sup>

Intermedia continuously monitors the status of its orders with BellSouth. Intermedia maintains "delinquency reports" which reflect the status of all orders placed with BellSouth. The reports referenced here, "Delinquency Report - November 6, 1997" (attached hereto and incorporated herein by reference as **APPENDIX B**) and "Delinquency Report - November 4, 1997" (attached hereto and incorporated herein by reference as **APPENDIX C**), reflect two batches of orders processed separately by two Intermedia employees. The first column of the reports, titled "PON #", reflects the Intermedia order

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<sup>25</sup> See, e.g., Cross-Examination of Alphonso Varner, North Carolina Hearing Transcripts, v. 3, p. 100 (stating that 48 hours was the target for receipt of firm order commitments) (excerpts are attached hereto and incorporated herein by reference as **APPENDIX A**).

<sup>26</sup> Typically, a CLEC using EDI submits an order through what is called an "850" transaction. Once the order is sent, and assuming the mandatory fields have been populated, EDI electronically sends out what is called an "855" message which essentially indicates to the person placing the order that the order has been received. BellSouth then either sends an electronic "865" transaction to the CLEC or sends an order clarification via facsimile. In many cases, Intermedia does not receive an "855", an "865", or an order clarification via facsimile, the effect of which is to cause confusion as to whether service to a customer has in fact been initiated.

number; the second column (redacted), titled "BTN", is the telephone number associated with the order; the third column, titled "Date Sent", is the date on which the order was placed; the fourth column, titled "Due Date", reflects the date on which the FOC is due; the fifth column, titled "Date Recv'd", is the date on which the FOC was received by Intermedia; and the final column, "Days Late," reflects the number of days elapsed between the "Due Date" and "Date Recv'd".

As reflected in the November 6 report, as of that date, Intermedia had 11 orders for which BellSouth missed the 48-hour commitment by at least one day, and several by at least 2 days. In one particular instance, BellSouth missed the 48-hour commitment by as much as 34 days. More egregious is the fact that 8 of Intermedia's orders have not even been acknowledged by BellSouth--in some cases over a month after the orders were placed. Thus, Intermedia is left to either guess as to the status of the orders or use its resources to manually follow-up with BellSouth. More important, Intermedia cannot bill its customers if it does not get an acknowledgment from BellSouth that the customer has been "turned up."

The same problems are reflected in the November 4 report. As that report shows, Intermedia had 18 orders for which BellSouth missed the 48-hour FOC commitment by at least 2 days. Much like the November 6 report, the November 4 report shows 16 orders for which no acknowledgment from BellSouth has been received by Intermedia. This demonstrates that BellSouth cannot even meet its own standards.

The record is also clear that BellSouth has not met its burden of proof in demonstrating that it provides access to its OSS at parity with competing carriers. Such proof can only come from performance standards and reports that demonstrate

nondiscrimination in processing orders from competitors and BellSouth's retail customers. Such empirical data as provisioning intervals are, therefore, critical to demonstrate parity of performance. As Intermedia noted in its comments, and echoed by several parties, it is critical that there exists a mechanism through which the Commission can determine BellSouth's compliance with its obligations, including parity of access to OSS.<sup>27</sup> As the record shows in this proceeding, however, BellSouth cannot prove parity of performance because it lacks adequate performance measures.<sup>28</sup>

BellSouth attempts to show that it is meeting the nondiscriminatory OSS access requirement by relying on the South Carolina PSC's decision. This reliance, however, is misplaced because the South Carolina PSC's conclusions were largely unsupported by the record. For example, the South Carolina PSC's argument that BellSouth is providing nondiscriminatory access to its network because CLEC complaints are resolved cooperatively,<sup>29</sup> simply does not make sense. The fact that complaints may have been resolved without resorting to formal complaint processes does not, in any way, demonstrate that BellSouth is complying under the 1996 Act to provide nondiscriminatory access. To the contrary, the fact that there are complaints in the first place is indicative of endemic problems with BellSouth's processes.

The record in this proceeding amply demonstrates that BellSouth's wholesale support processes are inadequate and discriminatory. There can be no clearer indication of

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<sup>27</sup> Comments of Intermedia, at 44.

<sup>28</sup> See, e.g., Comments of LCI International, at 7.

<sup>29</sup> Comments of the Public Service Commission of South Carolina, at 12.



this than the everyday experiences of Intermedia and other CLECs, whose ability to serve their customers is continually being hampered by BellSouth's inadequate operations support systems. The Commission is thus compelled to find that BellSouth has not met its unbundling, resale, and OSS obligations under the 1996 Act.

**IV. THE RECORD DEMONSTRATES THAT BELL SOUTH IS NOT PROVIDING UNEs AS REQUIRED UNDER THE 1996 ACT.**

The 1996 Act contemplates BellSouth's provision of a whole spectrum of competitive local services, including voice, data, and video. The record demonstrates that BellSouth has been remiss in its obligations. For example, AT&T states that BellSouth has not made available to AT&T unbundled local switching. In particular, BellSouth is unable to provide CLECs with the usage and billing data they need to bill for intrastate access services for reciprocal compensation.<sup>30</sup> Similarly, MCI's experience shows that BellSouth does not provide interconnection and collocation in accordance with the 1996 Act.<sup>31</sup> Even the South Carolina Consumer Advocate has concluded that BellSouth has not complied with its unbundling obligations because it has not fully implemented cost-based rates for interconnection and UNEs in accordance with the requirements of the 1996 Act.<sup>32</sup> The record in this proceeding reflects remarkable unanimity among competitors that BellSouth fails to provide UNEs or access to UNEs.<sup>33</sup>

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<sup>30</sup> Comments of AT&T, at 9.

<sup>31</sup> Comments of MCI, at 62.

<sup>32</sup> Comments of the South Carolina Consumer Advocate, at 5.

<sup>33</sup> See, e.g., Comments of TRA, at 13.

Intermedia's experience throughout the BellSouth territory confirms the commenters' arguments that BellSouth does not provide UNEs in accordance with the 1996 Act. As Intermedia described in its comments, despite extensive and continued discussions and correspondence with BellSouth personnel, BellSouth has yet to provide the unbundled digital loops and related components that Intermedia requested well over a year ago.<sup>34</sup> The particular circumstances surrounding Intermedia's experience are worth noting here:

- On June 21, 1996, Intermedia entered into an interconnection agreement with BellSouth. The interconnection agreement contemplates the provision of data services by BellSouth. Indeed, the parties were fully aware of Intermedia's requirements for data services. A copy of this agreement was appended as "Exhibit 1" to Intermedia's comments in this proceeding.
- On July 11, 1996, pursuant to Section 251 of the 1996 Act and the provisions of the Intermedia-BellSouth interconnection agreement, Intermedia requested unbundled frame relay-capable loops from BellSouth. A copy of the request is attached hereto and incorporated herein by reference as **APPENDIX D**.
- On September 10, 1996, almost two months after Intermedia first requested frame relay-capable loops, BellSouth committed to fulfilling Intermedia's request for unbundled frame relay-capable loops. A copy of this document is attached hereto and incorporated herein by reference as **APPENDIX E**. This is particularly noteworthy because BellSouth's action clearly indicates that it was fully aware of Intermedia's particular requirements.
- On November 11, 1996, during a luncheon meeting between Intermedia's and BellSouth's representatives, BellSouth agreed to provide tariffed Synchronet 56 and 64 kbps Digital Data Service to Intermedia as an interim measure, until it was capable of provisioning the unbundled 56 and 64 kbps data loops that Intermedia had requested. The tariffed service was discounted to a rate that approximated the rate that BellSouth would charge for the unbundled data loops when its was

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Comments of Intermedia, at 4.

prepared to offer them. This oral agreement is discussed in **EXHIBIT G** referenced *infra*.

- Intermedia continued to have meetings and communications with BellSouth personnel regarding Intermedia's request for frame relay-capable loops. Indeed, on January 6, 1997, Intermedia sent BellSouth a list of issues for resolution, which included the conversion of frame relay services then being purchased by Intermedia out of BellSouth's tariff to unbundled frame relay loops. A copy of this document is attached hereto and incorporated by reference as **APPENDIX F**.
- On January 8, 1997, Intermedia sent another letter to BellSouth concerning BellSouth's provision of interim Synchonet service in lieu of the requested unbundled frame relay-capable loops. A copy of this letter is attached hereto and incorporated herein by reference as **APPENDIX G**.
- On January 28, 1997, Intermedia once again wrote to BellSouth expressing dissatisfaction with BellSouth's inability to provide the requested unbundled frame relay loops. A copy of this letter is attached hereto and incorporated herein by reference as **APPENDIX H**.
- Intermedia is continuing to pursue the provision of unbundled frame relay-capable loops and related components with BellSouth. Copies of various communications sent by Intermedia to BellSouth with respect to this request are attached hereto and incorporated herein by reference collectively as **APPENDIX I**. These documents demonstrate that BellSouth is aware of Intermedia's data requirements, although to date, BellSouth has not yet provided Intermedia with the much-needed unbundled frame relay-capable loops and related components.

As of this date, Intermedia still has not received its requested unbundled frame relay-capable loops and related components, despite the fact that BellSouth is technically capable of providing such loops. Indeed, the Statement of Generally Available Terms and Conditions filed by BellSouth in Georgia in June 1997 lists the availability of 56/64 kbps loops which can be used for frame relay service. Instead of providing these requested frame relay-capable loops and related components, however, BellSouth is reselling tariffed data

services to Intermedia as a makeshift substitute for the unbundled components the 1996 Act requires BellSouth--and that BellSouth has committed--to provide.

As disturbing as BellSouth's inability to provision the requested unbundled loops is, even more disturbing are recent indications that BellSouth may be reneging completely on its promise to provide unbundled data circuits altogether. During cross-examination in Florida, BellSouth's witnesses stated that it was BellSouth's position that BellSouth was not obligated to provide any unbundled loops that were not specifically ordered by a State regulatory commission in an arbitration proceeding.<sup>35</sup> Because Intermedia entered into a voluntarily negotiated interconnection agreement with BellSouth--and did not bring the agreement to arbitration--this newly stated BellSouth position appears to mean that BellSouth will not provide the 56 and 64 kbps data loops that Intermedia has specifically requested, and that BellSouth previously committed to provide. Intermedia's witness Julia Strow's testimony in Florida describes BellSouth's recent vacillation (excerpts are attached hereto and incorporated herein by reference as **APPENDIX K**).

In addition, BellSouth witness Scheye, in the recently concluded Florida Section 271 proceeding, flip-flopped on whether Intermedia has requested frame relay-capable loops:

**Q:** Is it your position that the BellSouth account team for Intermedia has not had a specific request for frame relay based UNEs?

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<sup>35</sup>

See Florida Hearing Transcript, at 322 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT J**).

A: No, sir, I don't know what the account team and Intermedia have discussed. I know frame relay has been the discussion amongst the parties for several months.

Q: So you never made a statement like that?

A: I never made the statement what?

Q: That the BellSouth account team for ICI has not had a specific request for frame relay based UNEs?

A: I may have said--not to my knowledge. I don't know, they may have.

Q: Could I refer you to late-filed Exhibit Number 4 attached to your deposition.

A: That's what it says. The account team has not had a specific request for frame relay unbundled network elements.

Q: And that response was attributed to you.

A: Yes.<sup>36</sup>

Witness Scheye's testimony shows an organization that is either too confused or too incompetent to remember requests from competing carriers for unbundled network elements. As the documents appended by Intermedia to this reply demonstrates however, Intermedia has been requesting unbundled frame relay-capable loops for well over a year.

Intermedia's problems are not unique, as the record in this proceeding demonstrates. Several parties, including ACSI, LCI, and AT&T have offered proof that BellSouth has been dragging its feet in responding to competing carriers' requests for UNEs and resale services. BellSouth's inability to provide Intermedia with unbundled frame relay-capable loops and related components, sixteen months after Intermedia initially made its

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<sup>36</sup>

Scheye Cross-Examination, Florida Hearing Transcript, v. 6, p. 695-696.

request, is manifestly anticompetitive. More fundamentally, it demonstrates that BellSouth is not anywhere near being able to comply with its statutory obligations to provide UNEs. On this basis alone, the Commission must find that BellSouth cannot obtain in-region, interLATA authority at this time.

**V. THE RECORD SHOWS THAT BELL SOUTH DOES NOT COMPLY WITH ITS INTERCONNECTION AND MUTUAL COMPENSATION OBLIGATIONS.**

The record in this proceeding demonstrates that BellSouth is in violation of the interconnection and reciprocal compensation provisions of the 1996 Act. In its comments, Intermedia stated, as did several parties, that BellSouth is refusing to pay mutual compensation for local calls terminated to Internet service providers ("ISPs") located on CLEC networks.<sup>37</sup> This unilateral action to withhold payment for the transport and termination of ISP-bound local traffic is inconsistent with both BellSouth's obligations under the 1996 Act and the interconnection agreements into which BellSouth has entered. Intermedia's interconnection agreement with BellSouth, for instance, does not exclude local calls to ISPs, nor does it limit or restrict the definition of local calls or BellSouth's obligation to provide mutual compensation for them. Similarly, as Hyperion and KMC assert, the obligation to pay reciprocal compensation for transport and termination of "telecommunications" contains no exception for calls to ISPs.<sup>38</sup> Moreover, Intermedia agrees with ALTS that the Commission has long held that local calls to ISPs must be treated

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<sup>37</sup> See, e.g., Comments of Intermedia, at 40; Comments of Hyperion and KMC, at 2-3; Comments of South Carolina Cable Association, at 8-9; Comments of WorldCom, at 9.

<sup>38</sup> Comments of Hyperion and KMC, at 3.

as local calls by the local exchange carriers, and there is no reason why these calls should be treated differently now.<sup>39</sup> Indeed, the record shows that BellSouth paid--and received--mutual compensation for local calls to ISPs in the past. Thus, BellSouth's recently adopted position, while ingenious, has no basis in law or in fact.

Intermedia concurs with Hyperion and KMC that the South Carolina Public Service Commission ("South Carolina PSC") did not consider the issue of mutual compensation for ISP traffic in finding that BellSouth complied with its reciprocal compensation obligations. Indeed, it could not have considered that issue because BellSouth did not announce its intention to withhold mutual compensation for ISP traffic until August 12, 1997, eleven days after the South Carolina PSC released its decision. In fact, the South Carolina PSC order is bereft of any indication that the South Carolina PSC was even aware of this issue. Thus, BellSouth cannot hide behind the South Carolina PSC's order to avoid its statutory and contractual obligations.

Finally, as Intermedia explained in its comments, this issue is in dispute and is the subject of several proceedings before this Commission and several State regulatory commissions. Until this issue is resolved, the Commission cannot find that BellSouth is meeting its obligations to pay mutual compensation under checklist items (i) and (xiii) of the Competitive Checklist.<sup>40</sup>

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<sup>39</sup> Comments of ALTS, at 30.

<sup>40</sup> Intermedia notes that BellSouth has the ability to remedy this situation simply by paying the full amount of mutual compensation for the terminating local ISP traffic, and asking the relevant regulatory agency to resolve the matter. Under such an approach, no dispute would exist over whether BellSouth was  
(continued...)

**VI. CONCLUSION**

The record demonstrates that BellSouth is not eligible to seek in-region, interLATA authority in South Carolina under either Section 271(c)(1)(A) or Section 271(c)(1)(B). BellSouth's application before the Commission must be denied on that basis alone. Even if BellSouth is somehow allowed to proceed under Section 271(c)(1)(B)--in contravention of the 1996 Act and the record--BellSouth's application must fail because BellSouth does not satisfy the requirements of Section 271(c)(2)(B). As the record undeniably demonstrates, BellSouth has failed to provide UNEs and resale services, it has failed to provide nondiscriminatory access to its wholesale support processes, and it has failed to comply with its interconnection and mutual compensation obligations, among other things.

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<sup>40</sup>(...continued)

meeting its interconnection and mutual compensation obligations under the 1996 Act, and this matter would have no bearing on BellSouth's attempts to obtain in-region, interLATA relief under Section 271.




**Intermedia Communications Inc.  
BellSouth Telecommunications, Inc.  
South Carolina**

WHEREFORE, for all the foregoing reasons, Intermedia Communications Inc. respectfully prays that the Commission reject BellSouth's application to provide in-region, interLATA service in South Carolina.

Respectfully submitted,

**INTERMEDIA COMMUNICATIONS INC.**

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